



WHYPORTUGAL 2018

# Investors Guide



MACEDO VITORINO & ASSOCIADOS  
Sociedade de Advogados, RL

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# Foreword

Following harsh years, the surge in tourism in 2017 has given Portugal its highest growth since the beginning of the millennium. Investors now seek opportunities in Portugal, predominately in real estate, tourism, agriculture, wine production and manufacturing.

Portugal's growth in 2017, the support of the European Central Bank's monetary policy and the projected reduction of the government deficit to 1.3% in 2017 have renewed investors' interest in Portugal. Still there are challenges ahead. Portugal needs to reduce historically high levels of Government debt.

Portugal has an easy process for the creation of new businesses, reduced the time for obtaining administrative permits and improved its labour legislation.

For international investors looking for a place to invest in Europe, Portugal offers several advantages. Portugal is an ideal location for nearshoring industrial and services facilities because of its access to Europe's 500 million consumers' market. Portugal also offers access to the Portuguese-speaking countries in four continents: Europe, America, Africa and Asia.

Portugal has a proven track record of successful foreign investments across a wide range of sectors. Investors that are considering Portugal as a place to invest want to know the hard facts about the country and not the stereotypes associated with the country and its people.

Volkswagen's Portuguese auto-plant, Autoeuropa, is one of its most productive plants. Nokia Siemens Networks chose Portugal to install its new Global Networks Solutions Center. Microsoft, Colt, Ikea have also successfully invested in Portugal in recent years.

Portugal has one of the most favourable business environments in the World. The World Bank's «Doing Business 2018» Report ranks Portugal in the World's top 30 most attractive locations to do business, 13<sup>th</sup> in the EU and ahead of most southern and eastern European countries.

This guide reviews the main aspects to be considered by foreign investors looking at Portugal as a place to invest, in particular the setting up of a business, the hiring of employees, taxation, intellectual property, education system, dispute resolution, real estate and government incentives.

Read our online report at: [www.macedovitorino.com/en/why-portugal](http://www.macedovitorino.com/en/why-portugal)



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EXECUTIVE SUMMARY

# answering investors questions

WHYPORTUGAL 2018

# Investors Guide

Answer investors questions.

Promote Portugal on the basis of concrete and objective reasons using international sources:

| EUROPEAN COMISSION

| WORLD ECONOMIC FORUM

| OECD

| WORLD BANK

# Answering investors' questions

How long does it take to start a business and obtaining the permits I need to carry out a business activity? Is the process for obtaining licenses and permits transparent?

Opening a branch office or incorporating a company in Portugal can take only one day.

According to the Doing Business Report, it takes five days to start a business in Portugal in line with the average OECD high income countries. The time can be shortened if investors opt for online procedures.

Most administrative permits that are required to start a business activity can be submitted online. Procedures vary according to the activity that will be carried out, but generally the process is transparent and can be achieved in a reasonable timeframe.

The OECD also gives Portugal the best mark on its regulatory and administrative opacity index, which ranks how clearly and transparently are regulations and administrative procedures.

The World Economic Forum gives Portugal a mark of 5.1, with 7.0 being the highest score, in its Irregular Payments and Bribes index.

Will I be allowed to compete in the domestic market with the local players?

Traditionally the Portuguese economy welcomes foreign investors and is open to foreign competition across all sectors.

Portugal has no restrictions to foreign ownership of banks and companies in regulated sectors such as telecommunications and energy.

The World Economic Forum ranks Portugal in 6<sup>th</sup> place in the World with fewer non-tariff barriers to competition. However, practice shows that it is hard to break monopolies and oligopolies in many sectors, hence Portugal's poor ranking in the World Economic Forum's market dominance index with a 4.1 mark, clearly below European standards.

There are several examples of successful investments directed to the domestic market. The main telecom and electricity players are no longer State owned.

International investors have acquired strong positions in many of the main players in regulated sectors such as power generation and distribution, oil and gas, telecoms and banking.

# Answering investors' questions

## Will my Portuguese operations match the efficiency and productivity levels of other locations?

International statistics show low efficiency and productivity levels in Portugal when compared with the best international standards.

The World Economic Forum's 2017/2018 Report ranks the Portuguese economy's competitiveness in 42<sup>nd</sup> place out of 137 countries in the Global Competitiveness Index (GCI) which puts Portugal in the 18<sup>th</sup> place of the EU countries.

Portugal ranks in 65<sup>th</sup> place out of 137 countries in the World in the Pay and Productivity which is a poor result when compared with the European benchmark countries.

These rankings are explained by the poor management of public and some private sector companies which drag the overall figures down. In contrast, the productivity levels of foreign multinationals operating in Portugal are considerably higher.

Volkswagen, Nokia-Siemens, Cisco, Microsoft and Ikea are some well-known companies which have highly productive subsidiaries in Portugal.

## Will I be able to enforce contracts?

The World Bank's «Doing Business 2018» Report. Portugal ranks Portugal in 19<sup>th</sup> place worldwide and in the top 8 EU countries in enforcing contracts.

Time to enforce a contract is estimated to be around 547 days, which is better than many other European countries, although still far from the benchmark countries where it takes of less than one year to enforce a contract.

## Is it easy to hire and dismiss employees in Portugal?

Portugal has adopted legislation that is broadly in line with other European Union (EU) countries and less rigid than many other continental European countries.

Working schedules may now be managed in a more flexible way without increasing labour costs. The employer is allowed to unilaterally change the place of employment and employees' job functions. The severance pay was reduced from 30 days to 12 days per year of employment although leaving some safeguards for older contracts.

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CHAPTER 1

# about Portugal





# General information

Capital: Lisbon

Main District Capitals: Oporto, Coimbra, Aveiro, Leiria

Area: 92,152 Km<sup>2</sup>

Currency: € / Euro

Population: 10,325,500

Working Population: 5.17 million

Unemployment rate: 8,5% (October 2017)

GDP per capita: €16,887.20

Exports of goods and services: €75,779.200 million

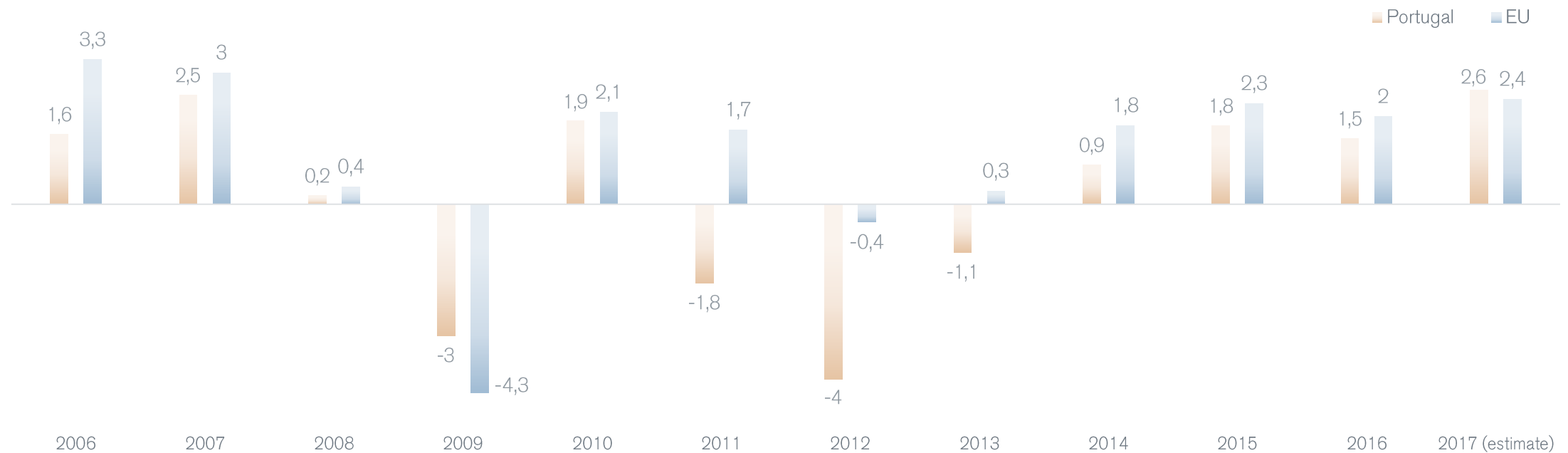
Imports of goods and services: €71,714.000 million

Portuguese National Statistics Institute, Eurostat and Pordata



# 2.6% GDP growth in 2017

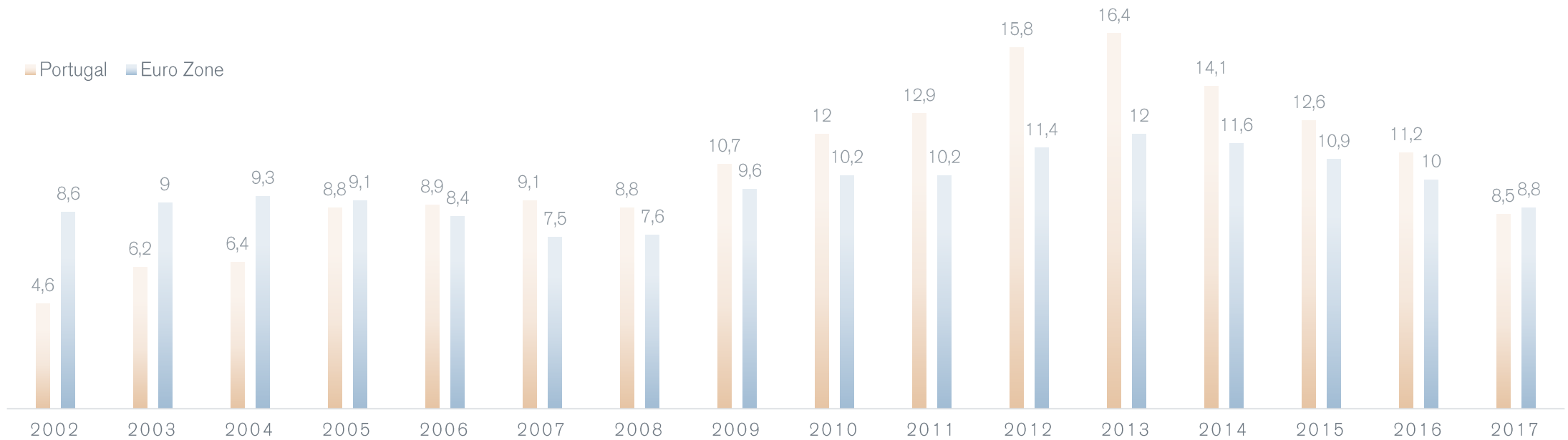
Portugal's key economic data: GDP growth from 2002 to 2017



Eurostat and Bank of Portugal

# 8.5% unemployment rate in 2017

Portugal's key economic data: unemployment rate from 2002 to 2017



Eurostat

# Territory, population and language

Portugal is situated in the southwest coast of Europe with borders only with Spain. With a territory of 92,152 Km<sup>2</sup> Portugal has the largest maritime zone in Europe. Its continental platform borders the American platform.

Portugal's total population is approximately 10 million people. Most of Portugal's population live in the mainland with less than 5% living in the Azores archipelago and in Madeira and Porto Santo.

Portugal has a 800-year history with its European borders established for over 500 years. This gives Portugal a homogeneous population, sharing similar values, despite the regional differences.

Moving within the country is common, especially from the inland rural areas to more populated costal areas and cities.

Emigration to other European countries and America was common, especially in the fifties, sixties and seventies of last century, mainly Germany, France and Switzerland but also to the United States and Canada.

Presently, there are still many Portuguese moving to outside of Portugal; this time with better working skills.

With its roots in the Latin language, Portuguese belongs to a group of languages called «Roman» or «Neo-Latin» that evolved from Latin.

Portuguese spread from Portugal to America, Africa and Asia. Portuguese is now spoke by about 230 million in Portugal, Brazil, Angola, Mozambique, Guinea, Cape Vert, São Tomé e Príncipe and Timor., making it the sixth most spoken language in the World.

English is spoken widely in Lisbon, Porto, Algarve and in other main tourist destinations.

Although most Portuguese nationals do not speak Spanish, most people can understand it.

French is less spoken in Portugal than it used to be before it was replaced by English as the second language in schools, bus is still spoken by some people.

# Political system

In the last quarter of the XX century, Portugal underwent several major political, social and economic changes.

Portugal is a republic based on a parliamentary democracy. The legislative power lays with a national parliament, the Assembly of the Republic, with 230 seats. The members of parliament are elected by universal vote for four-year terms. The Government depends on the support of the Parliament which has the power to overthrow it.

The Government holds the executive power. The current Prime Minister is António Costa leader of the Socialist Party. The minority socialist government has the support of a left wing coalition formed by the Socialist Party with the Left Bloc and the hard-line Communist party. Far-right populism and anti-European parties, now surging in Europe, are largely absent in Portugal.

The President of the Republic has limited powers, but holds the power to influence the Parliament's and the Government's decisions and the power to dissolve the Parliament in extraordinary circumstances. The current President of the Republic is Marcelo Rebelo de Sousa, elected in January 2016.

Bills of law require the signature of the President of the Republic, who promulgates laws and decree-laws approved by the Parliament and the Government respectively. The President may veto and send laws to the Constitutional Court for review their constitutionality.

The constitutionality of the laws and decree-laws enacted by the Parliament and the Government may also be submitted to the Constitutional Court by 1/5 of the members of the parliament. The Constitutional Court's decisions are binding on all courts and public authorities.

Portugal is a member of the EU since 1986 and a founding member of the Eurozone. Portugal is also a member of the United Nations, NATO and the OECD, since their creation.

Portugal is a member of the CPLP (*Comunidade dos Países de Língua Portuguesa*), which groups all Portuguese speaking countries.

Portugal is a party to many bilateral treaties aimed at promoting investment, avoid double taxation and other purposes.

# Currency and banking system

Portugal is one of the founding members of the «Euro», the currency of 19 European countries. The Euro is the second most actively traded currency in the World after the United States Dollar.

The currency symbol is «€». It circulates with seven banknotes and eight different coins: banknotes of 500, 200, 100, 50, 20, 10 and 5 euros, and coins of 2 and 1 euros and 50, 20, 10, 5, 2, and 1 cents.

The main banks operating in Portugal are:

- Caixa Geral de Depósitos, owned by the State;
- Millennium BCP, listed in Euronext Lisbon;
- Santander Totta, 100% owned by the Spanish giant Santander;
- BPI, now controlled by Spanish bank, LaCaixa; and
- Novo Banco, which succeeded to Banco Espírito Santo, then Portugal's oldest bank, following its resolution in 2014. Novo Banco was recently acquired by an international private equity firm, Lone Star.

Portugal's banking system is efficient and modern, despite the upheaval that followed the international financial crisis of 2008 and the Portuguese international bailout of 2011 which led to the change in ownership of some banks and to the collapse of Banco Espírito Santo, Banif, BPN and BPP; in some cases also caused by bad governance and management.

Credit is available throughout the system at competitive rates and banks are willing to lend to corporations and individuals, although credit conditions have tightened as a result of stronger regulatory pressure.

Portuguese capital markets are organised following European legislation and directives. The Portuguese stock Exchange, Euronext Lisbon, is part of the Euronext Group.

Portugal was the pioneer in establishing a countrywide ATM network, which allows the withdrawal of cash, money transfers and other services across the country.

Debit and major credit cards (especially Visa and MasterCard) are widely accepted in Portugal.



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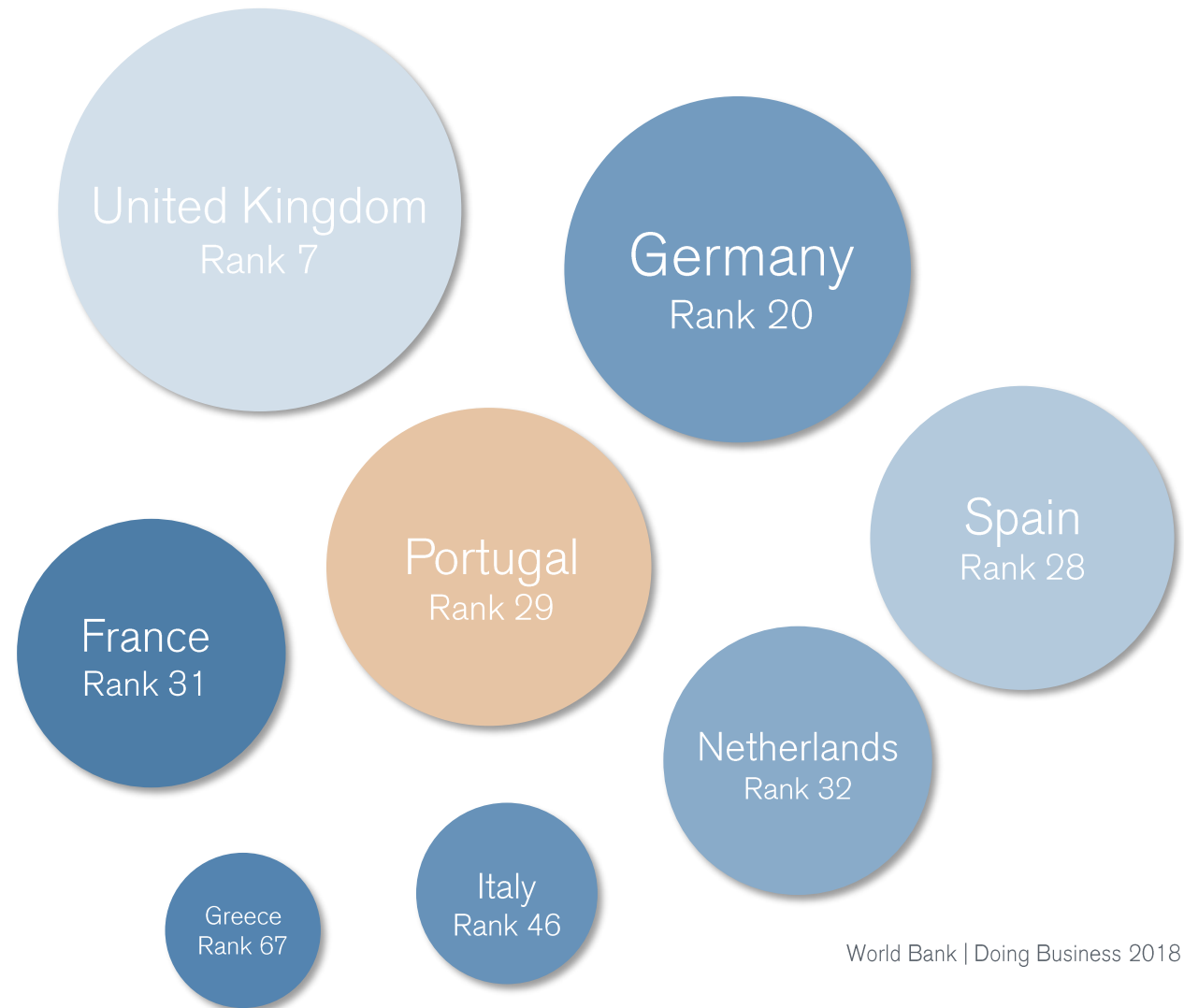
CHAPTER 2

# reasons to invest in Portugal

# Why Portugal in «Doing Business 2018»

13<sup>th</sup>  
most attractive  
location to do business  
in Europe

29<sup>th</sup>  
in the World



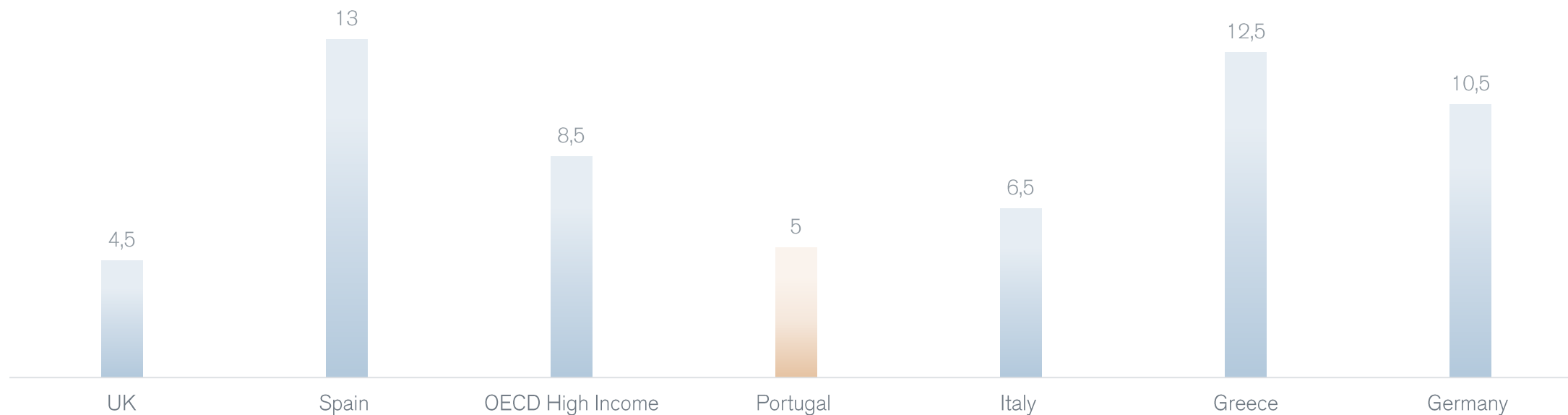
World Bank | Doing Business 2018



# It's easy

to start a business in Portugal

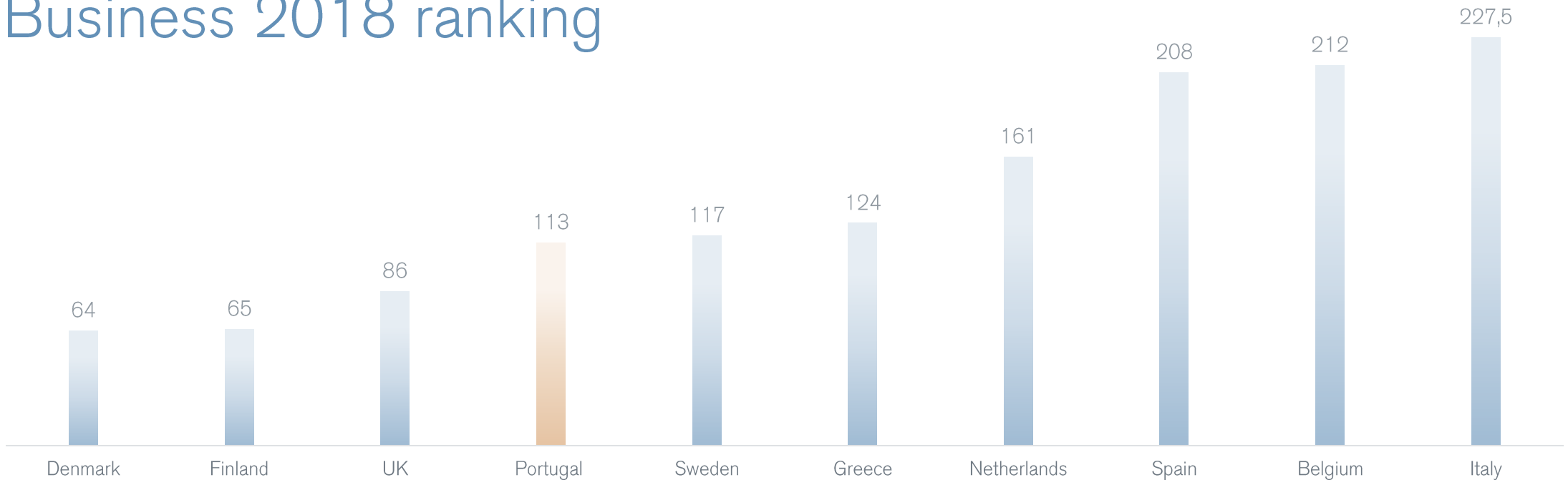
It takes 5 days



World Bank | Doing Business 2018

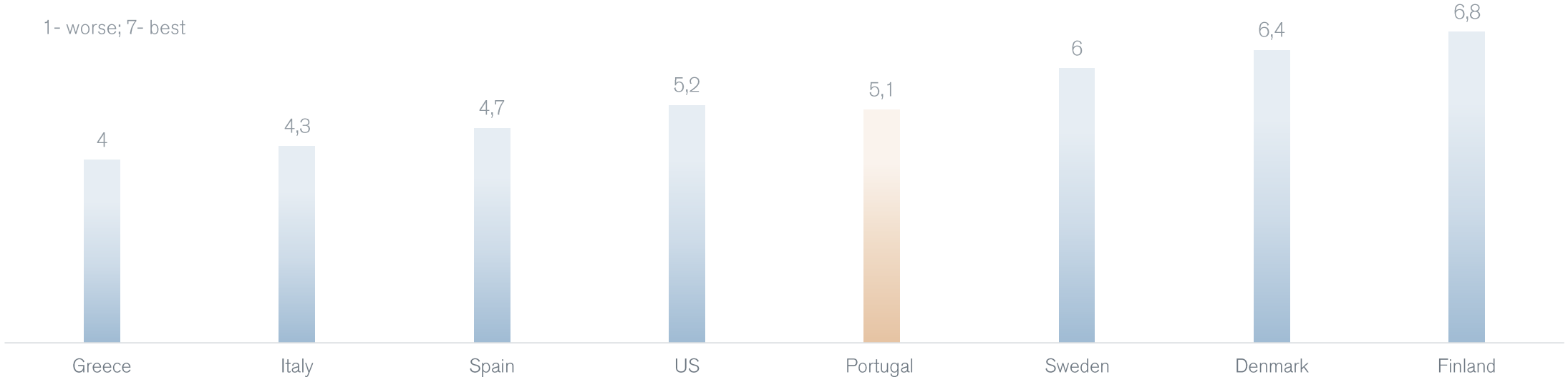
It takes 113 days to obtain a construction permit in Portugal

32<sup>nd</sup> place in the Doing Business 2018 ranking



World Bank | Doing Business 2018

# 35<sup>th</sup> in the World Economic Forum's irregular payments and bribes index

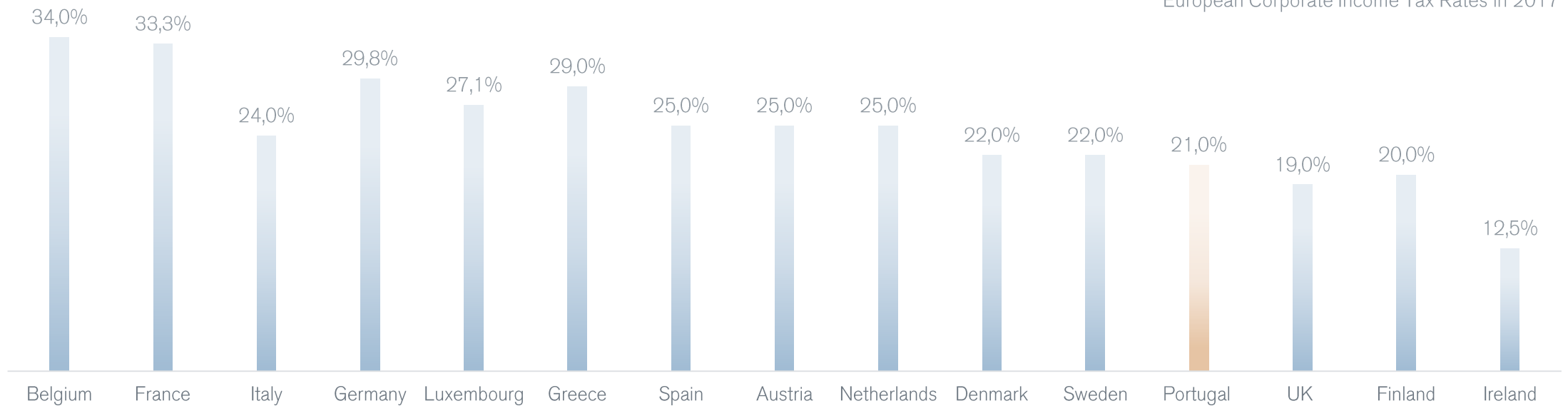


World Economic Forum | Global Competitiveness Report 2017-2018

# 21%

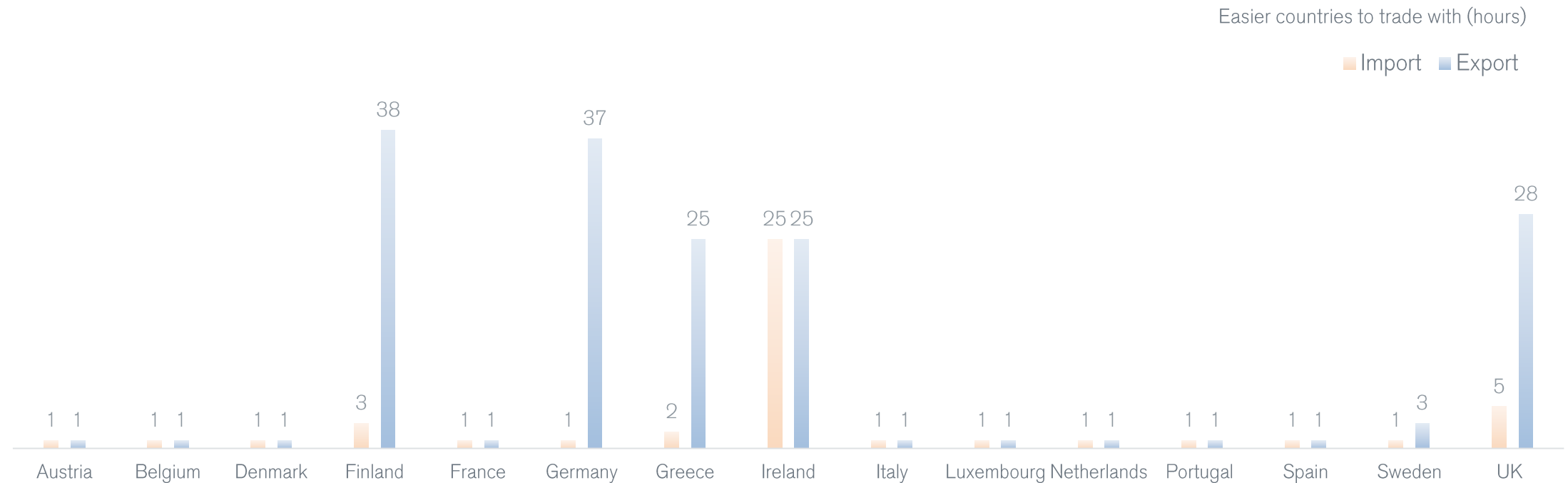
## Portugal's corporate income tax rate

European Corporate Income Tax Rates in 2017



KPMG Global

# Trading in Europe and across Portugal's borders is easy

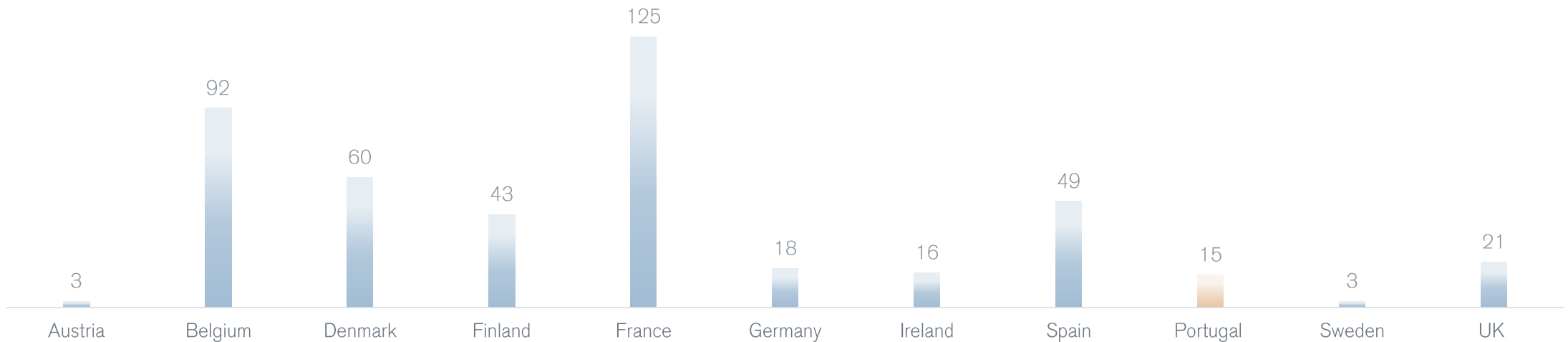


World Bank | Doing Business 2018

Only 15 days lost per employee in industrial actions

# Low level of employment disputes

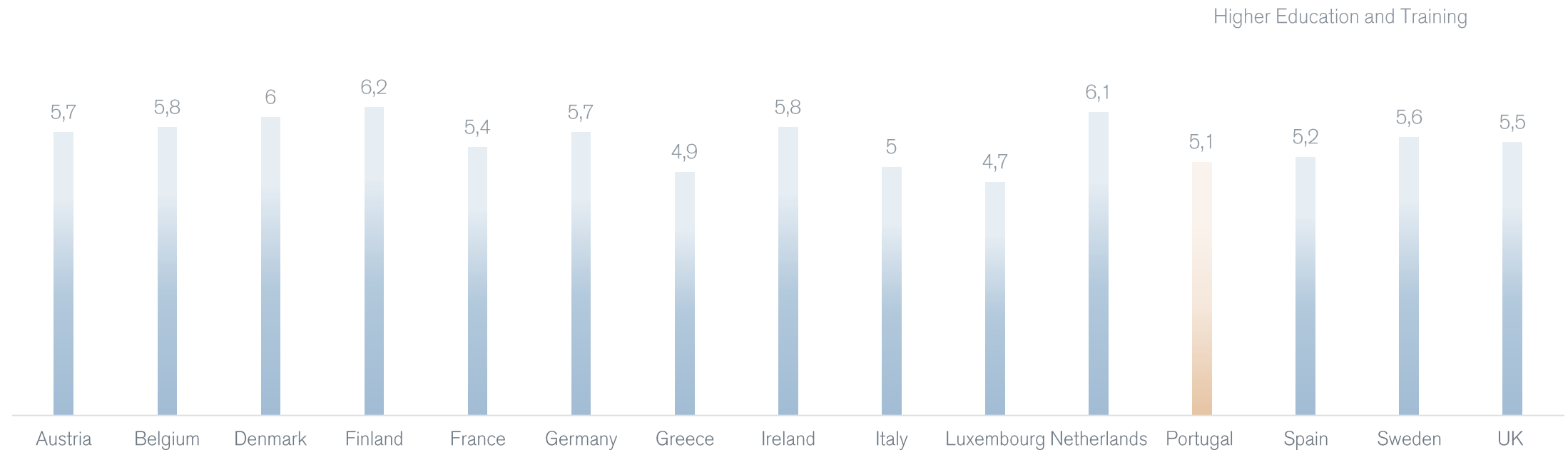
Number of working days lost through industrial action per 1,000 employees (annual average 2010-2016)



European Trade Union Institute

# 34<sup>th</sup> in the World Economic Forum's higher education index

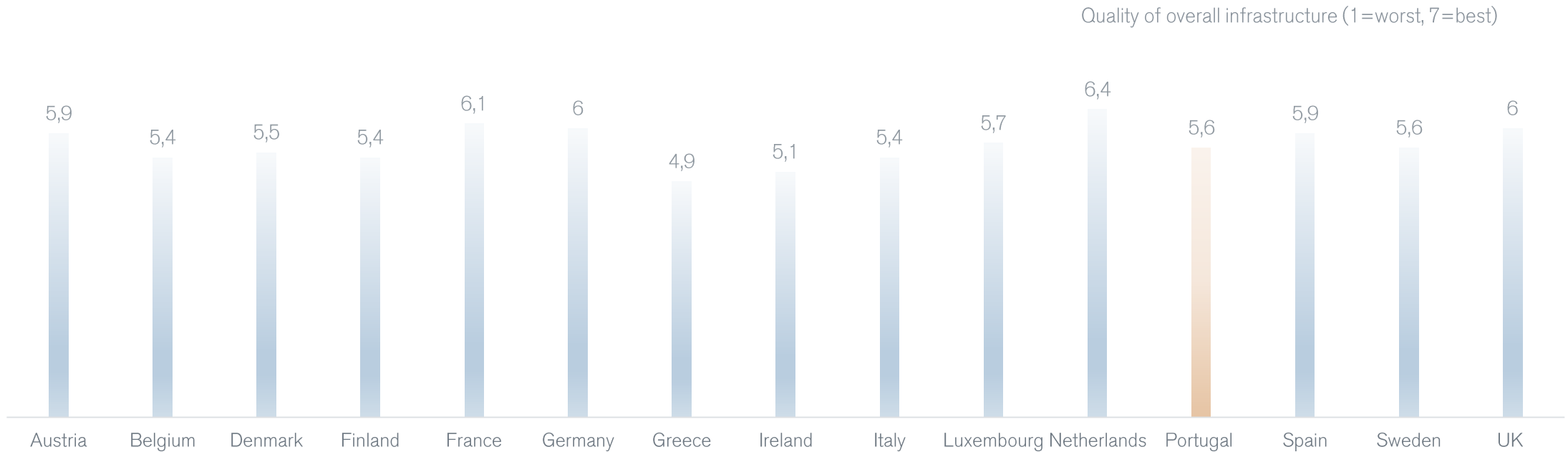
17<sup>th</sup> in the European Union



World Economic Forum | Global Competitiveness Report 2017-2018

# 18<sup>th</sup> best transport infrastructure in the World

8<sup>th</sup> in the European Union

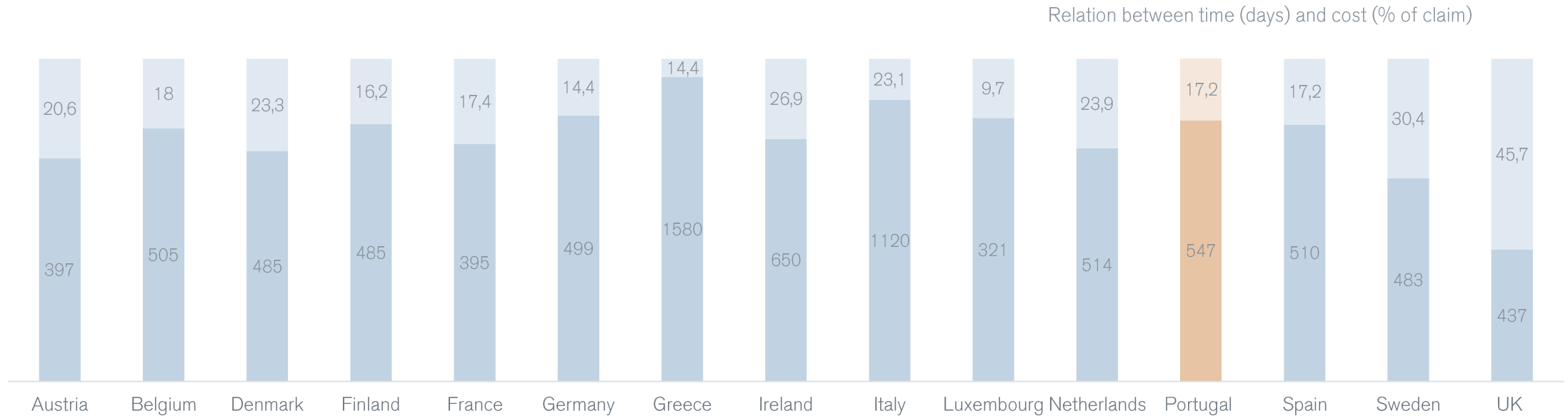


World Economic Forum | Global Competitiveness Report 2017-2018



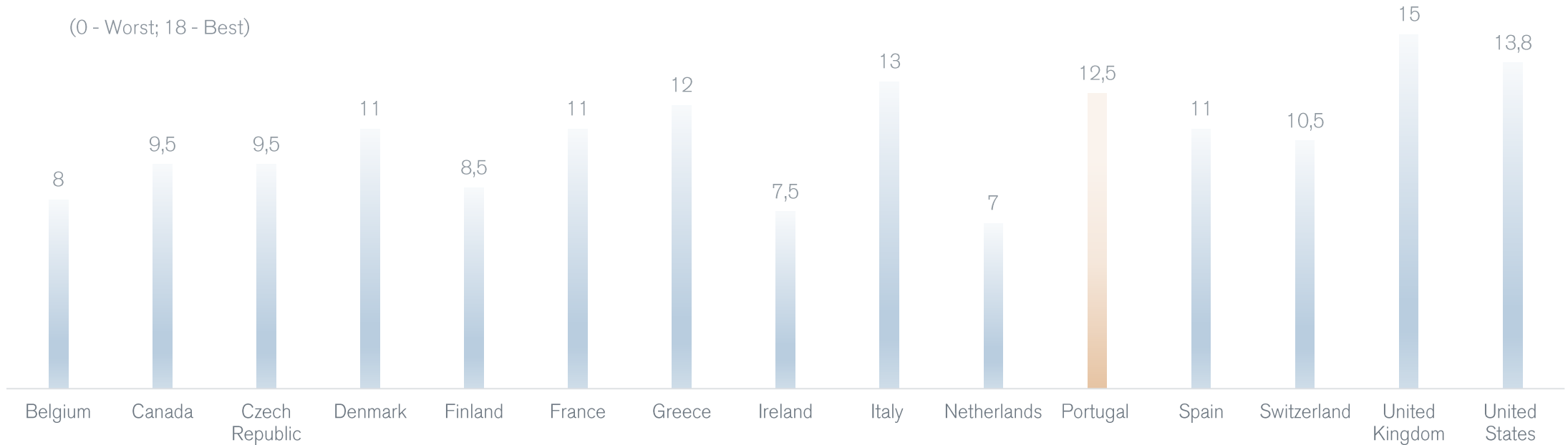
8<sup>th</sup> in the European Union

It takes 547 days to enforce  
a contract in Portugal



World Bank | Doing Business 2018

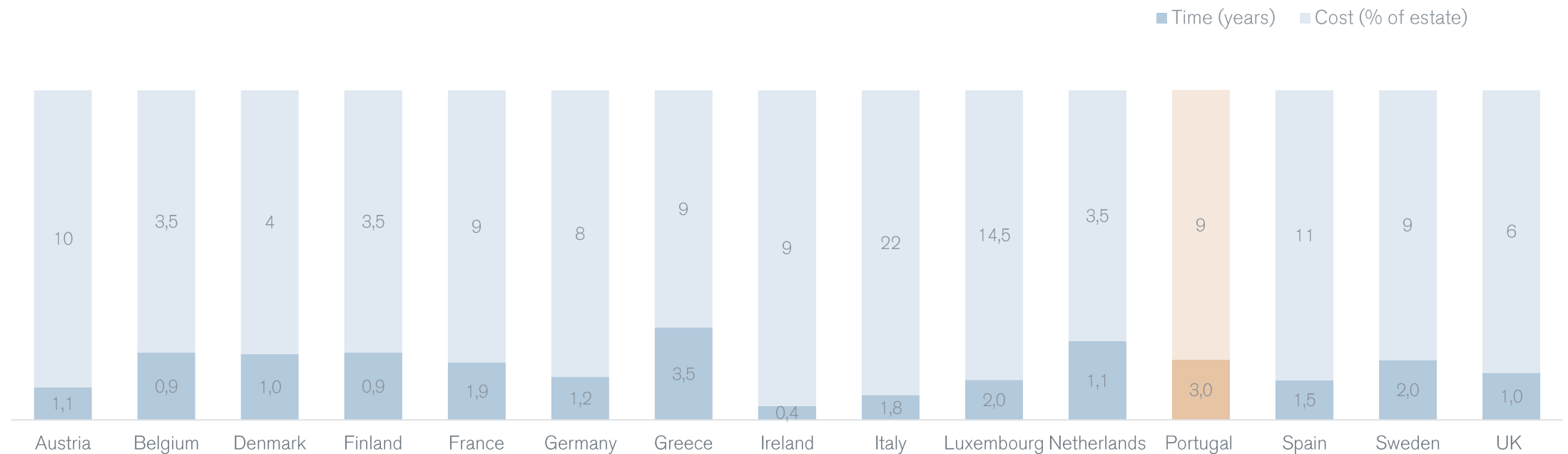
# Better quality of judicial processes closing the gap to the benchmark countries



World Bank | Doing Business 2018

# 9<sup>th</sup> in the European Union on ease of resolving insolvency

15<sup>th</sup> in the World



World Bank | Doing Business 2018



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CHAPTER 3

# starting a business

# Overview

Portugal has one of the most favourable business environments in the World. The World Bank's «Doing Business 2018» Report ranks Portugal in the top 30 of the World's most attractive locations to do business and in 13<sup>th</sup> place in the EU28 countries.

There are no restrictions to the establishment of businesses in Portugal. Certain business activities are regulated and require the approval of regulatory authorities, such as banking, telecommunications, energy generation and distribution, pharmaceuticals, etc.

There are no restrictions on foreign ownership of businesses and no nationality requirements regarding the ownership of Portuguese companies, save those established by European law. Foreign nationals may take positions in Portuguese corporations. There is no statutory quota of Portuguese nationals in the boards of companies established in Portugal or conducting business in Portugal.

The average time for incorporating a company and other formalities and registration procedures to start operating is five days.

The incorporation process can take one day if the investor chooses to acquire a shell company.

According to the World Bank's «Doing Business 2018» Report Portugal is in the top 15 EU countries where it is easier to set up a business.

Portugal is a pioneer in the use of online platforms for the incorporation of companies and making available company records and accounts. The process of business creation is now totally integrated and dematerialized and allows the incorporation of new companies, the registration of trademarks and business names online.

The Portuguese process of business creation allows for full online service provision with focus on the requirements and demands of investors.

According to the European Commission's «eGovernment Benchmark 2017» Portugal tops most of the charts concerning the availability and ease of use of eGovernment services.

Portugal has created an online platform named «Entrepreneurs Desk» (*Balcão do Empreendedor*), as part of its online «Citizen's Portal» ([www.portaldocidadao.pt](http://www.portaldocidadao.pt)) which centralizes the provision of eGovernment services to businesses and individuals. Some of the website's sections are in English and Spanish, but most of the sections are only available in Portuguese.

# Investment vehicles

## Differences between branches and companies

Opening a branch office and incorporating a subsidiary company are the investment structures commonly chosen by national and foreign investors.

The main differences between branches and companies are the following:

- A branch has no separate legal personality and operates as an extension of the parent company; companies have legal personality of their own;
- A branch has no equity requirement, although the parent company may allocate a capital amount to the branch for operational purposes; for some companies the law requires a minimum equity; and
- The branch's appointed legal representative is empowered to manage the business, no corporate bodies are required; companies are required to have a management body and a supervisory officer.

Other business forms can be used as investment vehicles in Portugal such as representative offices or unincorporated joint ventures.

## Limited liability companies

Most national and foreign investors choose the following type of limited liability companies:

- Public limited liability or joint-stock companies (*Sociedade Anónima, S.A.*); or
- Private limited liability companies (*Sociedade por Quotas, LDA*).

The main differences between private limited liability companies and public limited liability companies are:

- The minimum initial investment for SA' companies is €50,000, while LDA's only require a minimum share capital of €1 per shareholder;
- LDA companies may be incorporated with only one shareholder, while SA's require a minimum of five shareholders; and
- The shareholders of LDA's retain the power to intervene on management issues, unlike the shareholders of SA's.

# Incorporating a company

## «On-the-spot» companies (*empresa na hora*)

This method allows founders to set up a company in a single act at one of the official registration offices in the country (there is at least one registration office in each main city of Portugal), using a pre-approved corporate name and a standard form articles of association. The procedures will have to be started and completed the same day.

## Online incorporation

It may be possible incorporate a company online through the website [www.portaldocidadao.pt](http://www.portaldocidadao.pt) by providing the following information:

- The company's name, chosen from the list of pre-approved names available at [www.empresonline.pt](http://www.empresonline.pt) or previously obtained from the National Registry of Legal Entities (*Registo Nacional de Pessoas Colectivas*, RNPC);
- The articles of association, using one of the forms available online or submitting a draft articles of association for approval; and
- The data specified in the form to register the business with the employment, social security and tax authorities.

## Traditional method of incorporation

The traditional method comprises the following steps:

- Requesting the company's name certificate with the RNPC;
- Depositing the minimum initial share capital in a bank institution (in the case of public liability companies);
- Executing the articles of association by way of public deed or private document;
- Registering with the Commercial Registry Office;
- Publishing the articles of association and the list of the members of the company corporate bodies at the website [www.portaldocidadao.pt](http://www.portaldocidadao.pt);
- Social Security Registration; and
- Registering the company with the tax authorities, the social security and the authority for working conditions (*Autoridade para as Condições do Trabalho*).

No further formalities are required for the company to be able to do business in Portugal. Notwithstanding, after being incorporated companies have ongoing reporting obligations in relation to tax, social security, employment related matters etc.

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CHAPTER 4

# investment incentives





# Investment incentives

## Overview

Portugal offers national and foreign investors investment incentives to promote and attract new investments.

The incentives may include:

- Incentives granted under the «Portugal 2020» programme established through a partnership between the EU and Portugal covering the period 2014-2020;
- Tax incentives granted under the Investment Tax Code which aim to promote the competitiveness of the Portuguese economy; and
- Incentives programmes designed for specific situations, such as the creation of jobs, which may include temporary reductions of the employer's social security contributions, financial support for hiring young people, unemployed etc. and co-funding of training costs.

Portugal has also set up a system for monitoring, facilitating and reducing bureaucracy in the implementation of projects considered to be of «potential national interest» the so-called «projetos de interesse nacional» or PIN projects.

## Portugal 2020

The European Commission and Portugal entered into a partnership for the period from 2014 to 2020, named «Portugal 2020», under which the EU will allocate to Portugal approximately 25,000 million euros of structural funds until 2020.

The Portugal 2020 programme is composed of 16 operational programmes, as well as several territorial cooperation programmes.

The applications for Portugal 2020 incentives are made through an online platform, [Balcão 2020](#), which enables an easier and faster process. This platform also contains the applicable laws and regulations, support guides and indicates the relevant deadlines for application procedures.

The «Portugal 2020» programme aims to achieve concrete and measurable results. As a condition for the approving projects, the applicants must commit to the physical and financial realization of the project and to achieve the agreed results. The achievement of those goals is subject to audits and effective monitoring by the authorities.

# Tax incentives and PIN projects

## Tax incentives

Investments of at least €3,000,000 euros may benefit from tax incentives under the Tax Relief Investment Code (*Código Fiscal do Investimento*) to be granted until 31 December 2020 and for a period of up to ten years since the completion of the investment project. The tax benefits may include:

- Tax credits;
- Reduction or exemption of Municipal Property Tax in relation to the buildings used in the investment project; and
- Exemption from Stamp Duty in relation to all the acts or contracts necessary to carry out the investment project.

The tax benefits are granted to projects which demonstrate technical, economic and financial viability, provide for the creation or maintenance of jobs and meet at least one of the following requirements: are relevant for the strategic development of the economy, contribute to reduce regional economic divergences, promote technological innovation and scientific investigation, contribute to increase the country's environmental sustainability or to reinforce economic competitiveness and productivity.

## PIN projects

Portugal created a mechanism for monitoring and following up the approval of projects considered to be of potential national interest.

The PIN mechanism aims to simplify the approval of administrative licenses and permits required to implement the project as well as following the approval of grants requested under specific grants programmes, but it is not an incentives' programme on its own.

Projects that involve a total investment of at least €25 million and create a minimum of 50 jobs qualify as PIN projects. Exceptionally projects with a high degree of research and development investment, have a strong positive environmental impact or increase exports or the production of tradable goods, may also be granted PIN status. The recognition of the project as a PIN takes 30 days since the application.

PIN projects have a fast-track administrative process which allows for the simultaneous review by the various administrative bodies required to approve different components of the project, single public consultation period for the various administrative procedures and simplification of the environmental and planning review procedures.



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CHAPTER 5

# residence permits

# Residence permits

## EU citizens

Citizens of EU countries, Iceland, Liechtenstein, Norway and Switzerland do not require a visa to enter Portugal for short periods. Holding a valid identification document or a passport is sufficient.

Citizens of EU countries, Iceland, Liechtenstein, Norway and Switzerland who intend to stay in Portugal for a period exceeding 3 months must request a registration certificate (*certificado de registo*) from the municipal council (*Câmara Municipal*) of their area of residence, within 30 days after the first three months of stay in Portugal, which costs €15.

Holders of a registration certificate that remain in Portugal for five consecutive years may request a permanent residence certificate (*certificado de residência permanente*) from the Foreigners and Borders Service (*Serviço de Estrangeiros e Fronteiras*, SEF).

The right of EU citizens to move freely in Portugal extends to their family members, even when they are not nationals of an EU country.

## Citizens of non-EU countries

Citizens of non-EU countries who wish to live in Portugal must obtain a residence visa (*visto de residência*) at the Portuguese embassy in their country of residence.

A residence visa is a long-term visa which allows their holders to enter Portugal for a period of four months and to apply for a permanent residence permit (*autorização de residência*) from SEF.

Residence visas are issued if certain purposes of stay are met, such as:

- Working in Portugal as a self-employed person, employee or investor;
- Carrying research or teaching activities at a Portuguese higher education institution or performing other highly-skilled activities;
- Studying, volunteering or for internships; and
- To be reunited with family members living in Portugal.

# Golden visa

Nationals from outside the Schengen area can obtain a «Residence Permit for Investment Activity» (ARI), commonly named «Golden Visa», a visa-waiver regime which grants authorization for temporary residence for investment purposes. Golden Visas grant their holders the right to move freely within Portugal and the Schengen Area.

Applicants to Golden Visas must undertake to invest in Portugal. Eligible investments include, among others:

- Transfer capital in an amount equal to, or in excess of €1.000.000;
- Investment that lead to the creation of a minimum of ten jobs; or
- Acquisition of real estate with a minimum value of €500.000.

The investment must be maintained for a minimum of five years starting from the date in which the visa was issued.

The investment may be made directly by the individual applying for the Golden Visa or indirectly by a company owned by the applicant with head-office in Portugal or in a EU Member State with a permanent establishment in Portugal. When the investment is made by a company compliance with investment thresholds will be the pro rata share of the applicant's percentage shareholding in the company.

Golden Visas are valid for one-year and it may be renewed for subsequent two-year-periods. To renew their Golden Visas, holders must prove they lived in Portugal for at least seven days, consecutive or otherwise, in the first year and 14 days in every following two-year periods.

To obtain a Golden Visa applicants must:

- Be physically present in Portugal for the required period;
- Register with the Portuguese Social Security Authorities if the performed business activity in Portugal is subject to registration;
- Not have been convicted of criminal offences, punishable by imprisonment of over one year or with the entry ban in Portugal;
- Not have been flagged in the Schengen Information System and in the Portuguese authorities' information system for the purposes of refusing entry in Portugal;
- Hold a valid Schengen visa; and
- Apply for the visa within 90 days of entry in the country.

Golden Visa holders may be eligible for the permanent right of residence after five years.



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CHAPTER 6

# taxation

# Overview

Portugal's corporate income tax (CIT) rate is presently 21%, which is below the EU average of 21.51% and the global average of 24.25%.

Portugal's CIT rate remains reasonably competitive when compared with most of its competitors in the region.

For corporate investors the effective tax rate, which measures the average tax paid by corporations to local tax authorities discounting exemptions and tax benefits, may be a more reliable way of comparing countries' level of taxation.

According to the European Commission (EC) report «Effective Corporate Taxation, Tax Incidence and Tax Reforms: Evidence from OECD Countries», the Portuguese effective marginal capital tax rate in 2014 was of 13.8%, lower than the average rate of 18.4% of a basket of 17 OECD countries (including the EU-15 but excluding Luxembourg and Greece). At the time, Portugal's CIT was 14%, so Portugal's effective tax rate may now be lower than 13.8%.

As regards the bureaucracy involving tax declaration and payment, the World Bank's «Doing Business 2018» ranks Portugal in the 38<sup>th</sup> position worldwide on its «paying taxes» ranking, moving up eight positions since 2016.

Portugal ranks above the OECD high income average in three of the four indicators used by the World Bank.

On the «Total Tax and Contributions Rate (% of profit)», which measures the amount of taxes and mandatory contributions borne by the business in the second year of operation, expressed as a share of commercial profit, Portugal was rated 39.8 points closing the gap to the OECD high income average 40.1 points.

On the «Tax Payments (number per year)», which reviews the total number of taxes and contributions paid, the method of payment, the frequency of payment and of filing and the number of agencies involved during the second year of operation., Portugal received 8 points, still below OECD average 10.9 points.

On the «Post-filing Index» which measures the time needed to comply with VAT obligations, to obtain VAT refund, to comply with CIT audit and to complete a CIT audit, Portugal ranks in the top 10 EU countries and in 29<sup>th</sup> place in the World.

Lastly, it is important to highlight that Portugal is becoming one of the preferred destinations of many high net worth individuals in the World due to the non-permanent resident tax regime.

# Corporate taxes

## Corporate income tax

Any company whose head office or effective place of management is located in Portugal will be deemed to be resident in Portugal and subject to corporate income tax (CIT). Foreign companies may also be subject to CIT if they have a permanent establishment in Portugal or earn income that is deemed to have been obtained in Portugal.

A permanent establishment may exist if the foreign company carries out its activity in Portugal through a fixed place of business as well as if a person is acting in Portuguese territory for the account of such company and has the power to intermediate and conclude contracts on behalf of the company.

## Tax rates

Portugal's general CIT rate is presently 21% of the worldwide income or, in case of a foreign company with a permanent establishment in Portugal, over the income attributable to such establishment.

## Carry forward tax losses

Carry forward tax losses may be set-off against taxable income for CIT purposes up to 70% of such taxable income.

## Municipal and State surcharges

The municipal surcharge (*derrama municipal*) will be levied on the taxable income subject to and not exempt of CIT at a rate to be approved every year by each municipality or municipalities where the income is obtained (up to 1.5%). The State surcharge (*derrama estadual*) will be levied on the taxable income subject to and not exempt of CIT in excess of €1.5 million at the following rates:

- 3% when the taxable income ranges between €1,5 and €7,5 million;
- 5% when the taxable income ranges between €7,5 and €35 million; and
- 9% when the taxable income exceeds €35 million.



# Taxation of foreign companies

## Repatriation of income

Non-resident companies that do not have a permanent establishment in Portugal may also be subject to CIT if they earn income that is deemed to have been obtained in Portugal and that may be taxed in Portugal under the applicable double taxation treaty (e.g. dividends, capital gains, interest and royalties). In general, income (other than capital gains) that is deemed to have been obtained in Portugal will be subject to withholding tax at a rate up to 25%, although this rate could be reduced under the applicable double taxation treaties to 15% or 10%.

## Dividends, interest and royalties

The payment of dividends by Portuguese companies to companies resident in another Member State of the EU is exempt when certain conditions are met, such as the shareholding represents a minimum of 10% of the Portuguese resident company's share capital and is held for an uninterrupted period of one year, and both companies are eligible under the Parent Subsidiary Directive. Interest and royalties are exempt from withholding tax if payment is made to an affiliated company resident in another Member State of the EU subject to the fulfilment of the relevant holding requirements.

## Capital gains

The capital gains obtained by non-resident companies without a permanent establishment in Portugal from the sale of real estate property located in Portuguese territory will be subject to corporate tax. Unless otherwise provided in double taxation treaties, capital gains from the sale of shares and other securities issued by Portuguese resident companies may benefit from an exemption of corporate tax, except if:

- The seller is domiciled in a jurisdiction subject to a clearly more favourable tax regime;
- The shareholder is, directly or indirectly, owned in more than 25% by resident companies or persons, save if the shareholder is resident in a EU Member State, a EEA country or a country that entered into a double taxation treaty with Portugal and the stake fulfils some of the participation exemption requirements, such as a minimum stake of 10% and a minimum holding period of one year; or
- More than 50% of the target company's assets are composed by real estate property located in the Portuguese territory or, if the target is a holding company, more than 50% of any controlled company's assets include real estate property located in Portugal.

# Taxation of expatriates

## The non-permanent resident tax regime

The non-permanent resident tax regime (NPR) offers non-residents the opportunity to become tax residents in Portugal and benefit from a more favourable tax regime over certain Portuguese and foreign source income without the need of making any investments.

The main advantages of the NPR tax regime are:

- Employment and self-employment income obtained in Portugal will be subject to a 20% flat rate;
- Pensions obtained outside of Portugal will be tax exempt; and
- Other foreign source income will be tax exempt, provided it may be taxed outside of Portugal under the applicable tax conventions or the OECD model (if not a tax heaven) or, in case of employment income, it is effectively taxed in the source country.

These advantages will extend for a period of 10 consecutive years as from and including the year of registration as a tax resident in Portugal.

## Requirements

To obtain the NPR status the following requirements must be met:

- Not having been a Portuguese tax resident in the five preceding years;
- Registering as a tax resident and requesting the NPR status upon such registration or by 31 March of the following year; and
- In case of employment income obtained in Portugal and self-employment income obtained both in or outside of Portugal, having a «high value-added» activity.

High value-added activities eligible for NPR status include, among others, architects, engineers, plastic artists, actors and musicians, auditors, doctors and dentists, teachers and psychologists, liberal professions, technicians and similar and investors, directors and managers

## Other benefits

Other benefits for who take residency in Portugal include, among others, a tax exemption on gifts or inheritances to spouse, descendants or ascendants and a flat 10% stamp tax rate on gifts to other individuals and family members.

# Property taxes

## Taxes on the transfer of property

The transfer of real estate is taxable under the Municipal Property Transfer Tax (*Imposto Municipal sobre as Transmissões Onerosas de Imóveis*, IMT). IMT is calculated based on the higher of (i) the tax value of the property or (ii) the purchase price.

IMT rates are the following:

- Up to 6%, in case of residential urban properties;
- 6.5% for industrial or commercial urban properties;
- 5% for rural properties; and
- 10% in case the purchaser is an entity resident in a state, territory or region with a clearly more favourable tax regime.

In general, real estate transactions are exempt from Portuguese Value Added Tax (*Imposto sobre o Valor Acrescentado*, VAT). Notwithstanding, the seller or the lessor may, under certain conditions, opt to waive this exemption to deduct the input VAT.

When no VAT is charged, stamp duty is charged to the buyer of the property at a rate of 0.8% on the higher of (i) the tax value of the property or (ii) the purchase price.

## Property ownership tax

Ownership of real estate is subject to the Municipal Property Tax (*Imposto Municipal sobre Imóveis*, IMI).

IMI is levied on an annual basis on the value of urban property and land property located in Portugal and is owed by the property or usufruct owner or the holder of the surface right of a real estate unit at the following rates:

- 0.8% on land and attached facilities (*prédios rústicos*);
- Between 0.3% and 0.45% on urban properties (*prédios urbanos*); and
- 7.5% on properties owned by entities resident in a state, territory or region with a clearly more favourable tax regime.

The applicable rate within these ranges will be determined by the municipalities on a yearly basis, which is multiplied by three for urban properties left abandoned for more than a year and buildings in a state of ruin.

Urban buildings and apartments with a tax value of €1 million or higher will also be subject to an additional property tax of 1%, in case of residential buildings or land allocated to housing construction.

# Other taxes

## Social security contributions

As a rule, companies which hire employees will have to pay social security contributions at a general rate of 34.75%, of which 23.75% (or 23% for workers hired before 1 January 2016 with the minimum wage) is paid by the employer and 11% by the employee.

Expats may be exempt from social security if they meet certain conditions (e.g. if they continue to make contributions in other countries).

## Value added tax (VAT)

VAT is levied on any transfer of goods and the rendering of services. The normal VAT rate applicable in mainland Portugal is 23%. Certain goods and services are subject to either an intermediate VAT rate of 13% or a reduced rate of 6%.

In the Azores the general VAT rate is 18%. The intermediate rate is 9% and the reduced rate is 4%. In Madeira the VAT rates are 22%, 12% and 5%, respectively.

## Stamp duty

Stamp duty is levied on certain transactions that are exempted from VAT, such as loans (up to 0.6%), consumer credit (up to 1.5%), insurance (3 to 9%) and real estate transfers (0.8%).

## Excise taxes

On top of VAT excise taxes are levied on alcoholic drinks, some soft drinks, tobacco, petrol, oil by-products and cars.

## Customs duties

As a member of the EU, Portugal only imposes customs duties on the importation of goods from countries that are not members of the EU Customs Union.

The customs tariffs are calculated as a percentage of the imported good's price and related costs, which is set out in the European Common Customs Tariff.



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CHAPTER 7

# employment

# Overview

According to the World Economic Forum's «Global Competitiveness Report 2017-2018» the Portuguese employment legislation alongside that of many continental Europe countries is less rigid than many European countries, although still more rigid than that of the benchmark countries.

Despite the controversy regarding the criteria used by the World Economic Forum for evaluating the level of rigidity of legislation in the preparation of its report, one cannot but note that there is a marked gap in Portugal between the rights of the more recently employed workers and those benefitting from longer tenures. For instance, Portuguese legislation reduced the severance pay from 30 days per year of employment to 12 days but leaving several safeguards for older contracts.

Other aspects of the legislation have been revised since the adoption of a new Labour Code in 2009, which adopted more employer-friendly legislation as regards the organisation of its workforce.

Working schedules may now be managed in a more flexible way without increasing labour costs.

The Labour Code also contains flexible rules that allow the employer to unilaterally change the place of employment and the employee's functions.

The changes in the labour legislation have put Portugal within the EU average and ahead of larger European countries, such as Spain and France.

According to European Trade Union Institute, the number of working days lost through industrial action per 1,000 employees (annual average 2010–2016) was 15 days in Portugal, which is a value lower than in most other European countries.

More recently, according to Pordata, a national database of socioeconomic data, the average number of working days lost through industrial action by employee in 2016 was 11.8. This number is significantly lower than in several European countries, such as Spain, who lost 21.2 days in the same year.

According to the OECD, in 2016, the annual average hours worked on the main job by Portuguese employees was 1842 hours, against 1363 in Germany and 1676 in the United Kingdom.

The education levels of Portugal's working force has been improving over time with about 61.9% of tertiary education enrolment. According to World Economic Forum's higher education and training index Portugal now has a 5.1 mark which is broadly in line with its European partners, though still distant from the top three countries.

# Hiring employees

## Employment rules

Hiring in Portugal is subject to the mandatory rules and statutory limits set out in the law on several matters, such as remuneration, working hours, vacation rights or duration of contracts.

In general, employment contracts do not need to be in writing. Only for some specific types of contracts the law requires a written document, such as fixed-term contracts, part-time contracts, secondment contracts and contracts with foreign employees.

## Remuneration

The minimum monthly wage in Portugal since 1 January 2018 is €580. Salaries must be paid on a regular and permanent basis and may be fixed, variable or mixed, including fixed and variable components, which may be linked to the productivity, commission based or other objective and determinable factors.

In addition to the monthly salary, employees are entitled to receive a Christmas bonus equal to one month remuneration payable until 15 December of each year; and a holiday bonus equal to one month remuneration payable before the holiday period.

## Working hours

The maximum regular working period is of eight hours per day and 40 hours per week. Employees are entitled to a minimum rest period of eleven consecutive hours between two successive daily work periods, as well as to one day of rest per week.

An additional half or full day of rest (in all or in certain weeks of the year) may be also given other than the rest day required by law.

Employers and trade unions may agree to increase the work schedule up to 12 hours per day and 60 per week, provided the work schedule is reduced in other periods so that at the end of a reference period up to 12 months the average working hours is equal to 8h per day and 40h per week.

## Vacation rights

Employees are entitled to 22 business days of paid holiday per year. Employees are also entitled to 13 national public holidays. Under the collective bargaining agreements employers may be obliged to grant two optional public holidays.

# Employment contracts

## Types of employment contracts

**Open-ended contracts.** When the parties do not agree a term, the employment contract is deemed permanent, which means that the employer may only terminate the contract with “just cause”.

**Fixed-term contracts.** Contracts that are in force for a pre-established period set according to employer’s temporary needs, which must be specified in the contract, and expire at the end of the agreed term, unless they are renewed. Fixed-term contracts cannot be renewed for more than three times and have a maximum duration of three years.

**Unfixed-term contracts.** Contracts that are not subject to a pre-established period, but expire after the completion of the employer’s project or when the reason for which the employee was hired ceases to exist; unfixed-term contracts have a maximum duration of six years.

**Temporary employment contracts.** Contracts with temporary work agencies which hire the employee to subsequently second him/her to the user company. Temporary employment contracts may only be used to satisfy the employer’s temporary needs and be renewed up to a maximum of two years.

## Probation period

The probation period, during which either party may unilaterally terminate the contract without prior notice and without cause, varies depending on the type of contracts.

The maximum probation period is:

- For open-ended contracts: (i) 240 days for employees with management or senior positions, (ii) 180 days for employees with job positions of technical complexity, high degree of responsibility or which require special qualifications, and for employees in positions that involve a higher degree of trust and confidence and (iii) 90 days for other employees;
- For fixed and unfixed-term contracts: (i) 30 days for contracts with a duration equal or higher than six months and (ii) 15 days for contracts with a duration of less than six months.

In case of termination of the employment contract during the probation period, employees are not entitled to any compensation unless otherwise agreed in writing by the parties.



# Dismissing employees

## Expiration of term contracts

Term employment contracts expire at the end of their initial or renewal term, provided that serves a termination notice to the employee as follows:

- In fixed-term contracts, 15 or two years prior to the term of the contract; and
- In unfixed-term contracts, seven, 30 or 60 days prior to the relevant date if the employment contract has lasted for less than six months, from six months to two years, or more than two years, respectively.

In case of termination of the term contract due to the employees initiative or by revocation the employer are not obliged to pay any compensation.

## Collective dismissal

A collective dismissal is possible if the employer intends to dismiss a minimum of two employees (in companies with less than 50 employees) or five (in companies with 50 or more employees) within a three-months period, it may carry out a collective dismissal. Collective dismissal must have one of the following grounds: (i) market structure reasons, (ii) organization-related and economic reasons and/or (iii) technological reasons.

## Redundancy

In case the number of employees involved does not allow a collective dismissal, termination on the ground of redundancy could be an alternative. Redundancy must be justified on the same grounds as collective dismissal. The reasons for the termination cannot relate to an intentional behaviour of the parties and the employer may not hire another employee under a term contract to carry out the same tasks of the employee that was dismissed.

## Dismissal for ineptitude

The employer may terminate the employment contract when the employee demonstrates ineptitude or inability to perform the assigned tasks, provided that such ineptitude occurs in the course of the performance of the functions.

## Dismissal for breach

In case of the breach of the employees duties the employer may terminate the employment with just cause following a disciplinary action without the need of pay any compensation.

# Severance compensation

## Open-ended contracts entered into before 1.1.2011

The severance compensation is calculated as follows:

- Until 31 October 2012: one monthly base salary and seniority per each year of employment;
- Between 1 November 2012 and 30 September 2013: 20 days of monthly base salary and seniority per each year of employment; the amount of the monthly base salary and seniority may not be higher than 20 times the minimum monthly salary (presently €11,600);
- After 1 October 2013: 18 days of monthly base salary and seniority per each year of employment in the first three years of the contract, and 12 days of monthly base salary and seniority per each year of employment in the following years (the New Rules).

If the compensation calculated for the period until 31 October 2012 is equal or higher than 12 monthly base salaries and seniority or 240 of minimum salary (Relevant Threshold), the period after 31 October 2012 will not be taken into account. If that compensation is less than the Relevant Threshold, the total compensation may not exceed the Relevant Threshold. The minimum compensation is 3 monthly base salaries and seniority.

## Term contracts entered into before 1.1.2011

The severance compensation will be as follows:

- Until 31 October 2012: three or two days of base salary and seniority per each month of employment, if the term of the employment is lesser or higher than six months, respectively;
- After 31 October 2012 and until 30 September 2013: 20 days of monthly base salary and seniority per each year of employment; the amount of the monthly base salary and seniority may not be higher than 20 times the minimum monthly salary (presently €11,600);
- After 1 October 2013: the compensation amounts set out in the New Rules; and
- Minimum compensation is three monthly base salaries and seniority.

## Contracts entered into on or after 1.1.2011

The severance compensation is calculated in accordance with the New Rules and the severance compensation may not exceed the Relevant Threshold. No minimum severance compensation amount is imposed by law.



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CHAPTER 8

# intellectual property

# Intellectual property

Innovative ideas with commercial value may be protected as intellectual property. There are two major forms of intellectual property protection in Portugal: industrial property, which covers utility patents, designs and trademarks, and copyright, which protects literary, artistic works, multimedia creations, computer programmes and databases.

Copyright grants the owner literary and artistic works, music, movies and multimedia creations the right to exploit the work.

Authors are also granted the so-called «moral» or «personal» rights over their works, i.e. the right to protect the work or the right to be recognised as the author of his/her works. Moral rights are not assignable.

Economic exploitation rights can be assigned or licensed by the author or the copyright owner.

Copyrights does not require an official registration. The statutory protection of most copyright works lasts for 70 years after the date of death of the author.

Computer programmes are granted the same protection as literary works. This means that the right holder of a computer programme has the powers inherent to the economic exploitation of the work, including the right to permanent or temporary reproduction of a computer programme by any means and in any form, the power to make changes and any other modifications of a computer programme and the reproduction of the results thereof to any form of distribution to the public.

The economic exploitation of a computer programme by an individual or legal person, which is not allowed by the relevant right holder (such as a usage license), could be considered an unauthorized reproduction of a computer programme in violation of the Computer Program Rights Law and punishable as a criminal offence by the Cybercrime Law.

Databases are protected as a copyright work when they are deemed an intellectual creation as defined in the Protection of Databases Act.

When a database is not protected as copyright, its owner still benefits from special protection when there has been a substantial investment in obtaining, verifying or presenting the contents of the database. The exclusivity lasts for 15 years starting from the end of the calendar year in which the database was created.

# Industrial property

## Patents and utility models

Industrial property rights ensure the exclusive use of a particular invention which has an industrial use, even if they apply to a product consisting of or containing biological material or to a process that produces, treats or uses biological material. Inventions may include products, processes and new processes for obtaining already known products, substances or compositions. Utility models enjoy the same protection but cannot cover biological materials.

The duration of a patent is 20 years from date of application. Utility models' rights, on the other hand, last for 6 years from the date of application.

## Designs

Owners of designs which distinguish the product's form, lines, contour, colours, textures or materials have exclusive right to use design. To be protected designs do not need to be entirely new but need to involve novel combinations or layout of known elements with a distinctive character.

Rights over registered designs last for five years since the date of application and may be renewed for successive equal periods up to a maximum of 25 years.

## Trademarks

Trademarks give their holders a 10-year exclusive right to a sign or set of signs that can be represented graphically, words, names of persons, drawings, letters, numbers and sounds, the form of the product or respective packaging, that distinguish the products and services. Trademarks may also consist of advertising slogans for products or services.

## Trade secrets

There are no special laws concerning the protection of trade secrets. Owners of commercial secrets or technical skills (know-how) can to some extent rely on the general protection rules granted by civil and commercial legislation, in particular those on the prohibition of abuse of right and unfair competition, as well as shareholders' and employees' fiduciary obligations.

When unfair competition, abuse of right and other legal rules protecting business secrets do not apply or do not offer sufficient protection, it is advisable to enter into a non-disclosure agreement before exchanging confidential and sensitive information to business partners, shareholders, employees, suppliers and customers.

# Industrial property

## Patents and utility models

Industrial property rights ensure the exclusive use of a particular invention which has an industrial use, even if they apply to a product consisting of or containing biological material or to a process that produces, treats or uses biological material. Inventions may include products, processes and new processes for obtaining already known products, substances or compositions.

Patents are granted for 15 years as of date of granting or 20 years as of date of the registration application, whichever is longer. Utility models, on the other hand, aim to protect inventions by a simpler administrative procedure than patents than that for patents, and are granted for a period of 15 years, starting on the date of registration.

## Designs

Owners of designs of products which distinguish the product's form, lines, contour, colours, textures or materials have exclusive right to use design. Designs that are not entirely new but involve novel combinations of known elements or a different layout of elements already used in such a way as to endow their products with a distinctive character are also protected. Rights over registered designs last for 25 years starting on date of the registration application.

## Trademarks

Trademarks give their holders a 10-year exclusive right to a sign or set of signs that can be represented graphically, words, names of persons, drawings, letters, numbers and sounds, the form of the product or respective packaging, that distinguish the products and services. Trademarks may also consist of advertising slogans for products or services.

## Trade secrets

There are no special laws concerning the protection of trade secrets. Owners of commercial secrets or technical skills (know-how) can to some extent rely on the general protection rules granted by civil and commercial legislation, in particular those on the prohibition of abuse of right and unfair competition, as well as shareholders' and employees' fiduciary obligations.

When unfair competition, abuse of right and other legal rules protecting business secrets do not apply or do not offer sufficient protection, it is advisable to enter into a non disclosure agreement before exchanging confidential and sensitive information to business partners, shareholders, employees, suppliers and customers.

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CHAPTER 9

real estate

# Freehold and other forms of property interests

Freehold (*direito de propriedade*) is the most common form of property in Portugal. Freehold gives the owner the rights to use, exploit and dispose of a certain immovable asset. These rights include the right to build on a property subject to the applicable licensing requirements.

Properties may be owned by more than one natural or legal person, where each owns proportional and intangible share of the property. Each co-owner may dispose of his portion without the consent of the other co-owner(s), but the co-owner(s) will have a right of first refusal.

Portuguese law allows buildings or building developments to be divided into «fractions» where each fraction, which may be an apartment, a store or an office, is owned by a single owner and the common areas of the building are co-owned by the owners of the building's fractions.

The owners together constitute the community of owners of the commonly owned property (condominium) including the staircases, outside area, roof, etc. Each of the owners may freely dispose of or encumber his fraction of the property including his share in the condominium.

Other property interests recognised under Portuguese law include:

- Building rights (*direito de superfície*). Building rights give their holders the right to construct and maintain a building or plantation on or beneath the surface of the property. The building right may be temporary or permanent, transferable or not; and
- Usufruct (*direito de usufruto*). Usufruct rights give their holder the right to use and collect the fruits and benefits (*frutos*) generated by the property, which include the rents and other periodic revenues generated by the property.

In general, property and property-like interests (the so-called *rights in rem*) which are set out by the Portuguese Civil Code and other legislation are subject to registration with the land register and may only be constituted, mortgaged or transferred by way of a public deed executed before a notary.

No property rights or similar rights may be created by contract other than in the manner specified in the law.



# Lease rights

Commercial leases are the most common arrangement for the use of offices and retail stores in Portugal. Under a commercial lease, the lessor grants the lessee the right to temporarily use the leased property with the obligation to return it at the term of the contract.

Portuguese law allows the parties to freely stipulate the main terms and conditions of the lease, such as the rent, rent review conditions, cost allocation, duration, renewal conditions, termination options, etc.

The maximum term of commercial leases is 30 years. There is no statutory term and the parties are allowed to specify the applicable term. In the absence of a contract term, the implied statutory term is 10 years. Typically, commercial leases for office space and stores have a duration of five to six years.

The rent is usually payable on a monthly basis, but different payment dates may be agreed. Rent free periods and rents including a variable component are common in Portuguese office and industrial leases.

As a rule, the rent is updated on an annual basis in accordance with the consumer price index (excluding housing) published by the National Statistics Institute (*Instituto Nacional de Estatística*) but the parties may agree otherwise.

The assignment of the lease included in the transfer of a business as a going concern (*traspasse*) does not require the consent of the landlord.

Eviction of defaulting tenants must be enforced through court proceedings or, in some cases, through a special administrative eviction procedure with the National Lease Office (*Balcão Nacional do Arrendamento*).

Leases of stores in shopping centres, retail parks and other similar developments where the owner or manager also provides certain management and operation services to the lessee are not subject to the statutory rules on leases, allowing the parties to freely determine the terms and conditions of the lease, subject only to general contract law rules and principles.

Typically, the main rules on the operation of the development are set out in a «regulation» approved by the development owner or manager. Rent-free periods, stepped-up rents and rents with variable components are common in this type of leases. The costs of utilities, services, maintenance and improvement works in respect of the shops are normally borne by the lessee in the form of «common service charges», which include management fees, other common areas related services and, sometimes, certain marketing costs.

# Structuring the acquisition of real estate

Investments in property in Portugal may be carried under any of the following structures: i) direct ownership by the investors, ii) indirect ownership by way of the incorporation of a special purpose.

The incorporation of a foreign or Portuguese special purpose vehicle (SPV) is the most suitable scheme to hold property rights in Portugal, as it has advantages in the investments and in the divestment process, limits the liability of the investor and has a lower tax impact.

If the investors choose to incorporate a Portuguese SPV to carry out transactions in Portugal, they may opt between one of the following forms: i) a real estate investment fund or a real estate investment company and ii) a real estate investment company.

If the investors intend to acquire several immovable assets in Portugal, it may be advisable to incorporate a real estate investment fund (*fundo de investimento imobiliário*, FIL), especially for tax reasons. The incorporation of FILs is subject to the rules established in the Property Investment Funds Law approved by Decree-Law 60/2002 (*Lei dos Fundos de Investimento Imobiliário*).

FIL managing companies must be incorporated with a minimum share capital of €125,000.

The share capital must be represented by nominative shares.

The Property Investment Funds Law also sets a minimum capitalisation rule, which may burden certain transactions with an additional cost. The fund managing company's own funds must represent at least 0,5% of the total net global value of FILs under management up to the amount of €75 million, plus 0,1% of the amount in excess of €75 million.

As an alternative to the incorporation of a FIL, investors may also consider the incorporation of a real estate investment company (*sociedade de investimento imobiliário*, SIMO).

SIMOs are financial intermediaries and are subject to the rules established in the Property Investment Funds Law.

SIMOs may be managed by fund managing companies and must be incorporated with a minimum share capital of €375.000.

# Financing the acquisition of real estate

The financing of real estate investments may take a variety of forms. It is common to obtain financing from the following sources: i) equity or shareholder loans, ii) bank debt/bonds and iii) financial lease.

Many banks and other financial investors usually provide funding of real estate assets under loan arrangements collateralized by the asset. Collateral may be provided by way of mortgage over land, buildings and specified registered moveable property, pledge of moveable assets or assignment of proceeds.

Pledges are fixed charges created over the shares of the target or its subsidiaries, moveable assets or the business establishment of the target that give the lenders the ability to sell the assets or priority in the event of insolvency of the guarantor.

Pledges may be enforced by court sale, private sale or foreclosure of financial pledges.

A mortgage enables the lender to be paid with respect to the secured liabilities by the value of certain immovable assets, or other assets treated as such, with preference over the remaining common creditors.

Mortgages must be created by way of public deed and registered before the relevant land or property registry office.

Instead of acquiring the freehold, investors may opt to enter into a financial lease with a leasing company whereby the leasing company will buy the immovable asset selected by the tenant and will grant the tenant with the right to use the asset against the payment of a rental during a period of time after which the lessee may acquire the leased asset by a residual price. In general, the rentals will cover include the price of the asset plus interests.

The term of the lease agreement should not be higher than the useful life of the asset and may not, in any case, exceed 30 years.

Under financial leases, the lessee will run all the risks and advantages inherent to the utilization of the asset. This means that the lessee instead of the lessor will depreciate the asset at the applicable rates.

Another lease structure that may be used is the lease-back whereby the lessee will sell the asset to the leasing company against consideration and then the lessor will lease it back to the lessee against the payment of a rental

Although the parties are free to agree the terms and conditions of the lease, we should note there are specific accounting and tax provisions that must be carefully considered to avoid that the tax authorities may change the characterization of the agreement and correct the annual returns of the SPV.

# Tax issues

The transfer of immovable property is taxable under the Municipal Property Transfer Tax (*Imposto Municipal sobre as Transmissões Onerosas de Imóveis*, IMT). IMT is calculated based on the higher of the tax value of the property or the purchase price.

In general, real estate transactions are exempt from VAT. Notwithstanding, under certain conditions, the seller or the lessor may opt to renounce to such exemption in order to be able to deduct the input VAT.

Ownership of immovable property is subject to the Municipal Property TAX (*Imposto Municipal sobre Imóveis*, IMI). This tax is levied on an annual basis on the value of urban property and land property located in Portugal and is owed by the property or usufruct owner or the holder of the surface right of a real estate.

The applicable rate within these ranges will be determined by the municipalities on a yearly basis and increase threefold in the case of urban property left vacant for more than a year or of buildings in a state of ruin.

The urban buildings and apartments will be deemed not to be in use if the owner has not contracted the provision of essential public services or there is no consumption of water, electricity, gas and telecommunications for a period of one year.

Should the investors decide to incorporate an SPV in Portugal, corporate income tax will be charged over its taxable annual.

Personal Income Tax (*Imposto sobre o Rendimento de Pessoas Singulares*, PIT) and corporate tax are charged over the worldwide income obtained by individuals and companies resident in Portugal and on any income obtained by non-resident individuals or companies which is attributable to a permanent establishment in Portugal or is deemed to having been obtained in Portugal.

FILs benefit from a special tax regime set out in the Tax Benefits Statute, which has been recently amended.

The tax implications of the transaction play an important role in the structuring of the acquisition.

The use of this types of vehicles became more attractive, among other reasons because certain FILs may benefit from property transfer tax (IMT) and property tax (IMI) exemptions. Rents and capital gains will be exempt at the level of FIL and foreign investors will be taxed at a reduced rate of 10%. However, considering the applicable regulatory requirements, Fil may not be suitable to all kinds of investments.

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CHAPTER 9

# dispute resolution



# Overview

The Portuguese judicial system is divided in two jurisdictions: the civil jurisdiction and the administrative jurisdiction. In both, courts are divided in three tiers.

Civil courts rule on «civil» disputes which cover family and inheritance matters, disputes concerning minors, civil contracts, property, labour and employment cases, commercial matters, intellectual property and regulatory issues and criminal cases.

The courts of first instance are organised on a territorial basis and according to the nature of the matter. In broad terms, courts are divided in civil courts, criminal courts, labour courts and commercial courts.

The second instance courts, the Courts of Appeal (*Tribunal da Relação*) decide on appeals of the lower courts' decisions regarding any cases falling within the civil jurisdiction, regardless of the nature of the matter in dispute. There are four Appeal Courts, based in Lisbon, Oporto, Coimbra, Evora and Guimarães. The Lisbon and Oporto Appeal Courts are organised in sections specialised in civil, commercial, labour and criminal matters.

The Supreme Court of Justice is the higher court of the civil jurisdiction and has national jurisdiction. The Supreme Court of Justice decides on appeals from lower courts. The Supreme Court is also organised in specialised sections.

Civil claims with a value of less than €15,000.00 may be submitted to the Justices of Peace (*Julgados de Paz*), whose decisions may be appealed to the courts of first instance.

In civil disputes, that do not involve personal rights, and commercial disputes, the parties may opt to submit the matter to arbitration court. «Ad hoc» arbitrations and arbitration under the aegis of the Portuguese Arbitration Association, the ICC are commonly used in Portugal for high value disputes.

The Circle Administrative Courts and the Tax Courts decide on disputes arising against public authorities involving public authorities' decisions and acts and tax matters.

The Central Administrative Courts are the second instance courts for the administrative jurisdiction. The South Central Administrative Court is located in Lisbon and the North Central Administrative Court in Oporto.

The Supreme Administrative Court, the higher court for public law and tax matters, is divided in two sections: the administrative section and the tax section.

Tax disputes may be submitted to arbitration under a special arbitration regime. Specific issues, such as sports law matters, are subject to compulsory arbitration.

# Civil courts

## Court hierarchy

Like most other European judicial systems, courts are organised in territorial circumscriptions, which are then divided according to the various fields of law.

When the object of the lawsuit is a civil matter, such as the payment of a sum of money, the hierarchy of the court will be relevant to determine whether the matter can be appealed to the Appeal Court or to the Supreme Court of Justice.

In general, the court of first instance is the court where the judgement takes place and the evidence is produced.

If one of the parties is dissatisfied with the decision issued by the court of first instance, it may appeal to the Appeal Court. The Appeal Court may annul or change the decision of the court of first instance on the basis of misinterpretation of the law and review the evidence and the facts on which the court of first instance based the decision.

In certain cases, having regard to the financial value in stake or the interests concerned, the decision of the court of appeal may be challenged by appealing to the Supreme Court of Justice, which rules only on the legal matters at stake.

## Powers of the court

In general, the court have the power to issue decisions regarding any matter to be determined in the proceedings, which include the powers to order the payment of a sum of money (in any currency), grant injunctions against the parties, order the performance of a contract obligation, order the rectification, setting aside or cancellation of deeds or other documents, declare divorces, order the division of assets caused by the death of his owner, etc.

The court may also, following a request of an interested party or on its own accord:

- Give instructions as regards the preservation, custody, inspection, detention of property owned by or in the possession of a party to the proceedings;
- Give instructions as to the preservation of evidence in the custody of a party;
- Order a party to give warranties to ensure the payment of any due costs;
- Order provisional measures during the proceedings, including requiring a party to make an interim payment on account of the claim or the costs of the process.

Courts are independent from the executive and legislative power and have a high degree of discretion in the exercise of their functions. Courts are submitted only to the law and the constitution.

# The judicial procedure

## The claim and the defence

In general, lawsuits should be limited to just two key files: the claimant's petition and the defendant's defence.

Litigation begins when the plaintiff files a petition to the court (*petição inicial*), detailing what the defendant has done or failed to do that caused damage to the plaintiff and specifying the basis, factual and legal, for his claim against the defendant.

After being served with a plaintiff's claim, the defendant will have a 30-day deadline to respond to the plaintiff. The defence is always provided in writing in the form of a briefing addressed to the court (*contestação*).

## The preliminary hearing

After the claim and defence are filed in court, the judge will schedule a «pre-trial» meeting to attempt a settlement between the parties. If the settlement fails, the «pre-trial» meeting will serve to discuss the facts and matter of law of the case, where the judge may decide on procedural questions or immediately on the merits of the case, determine the terms of the dispute and schedule the final hearing.

## The trial

The final hearing starts with an attempt of settlement between the parties. If the settlement fails, the final hearing follows with the submission of evidence, such as depositions of the parties, expert testimonies and depositions of witnesses.

Within 30 days from the final hearing, the court will rule on the case.

## Challenging the decision

Common reasons for challenging a court's decision are errors in the interpretation or application of the law by the court or disregard of evidence.

If the appeal is based on factual grounds, the Appeal Court will confirm the ruling if it finds no error. If the Appeal Court finds an error, it will reverse the ruling or order the court of first instance to conduct a new trial.

After a ruling is given by the Appeal Court, the parties may also appeal to the Supreme Court of Justice (*recurso de revista*), except the decision of the Appeal Court that confirms the decision of the Court of First Instance



# Court fees and other legal costs

Claim costs include the judicial fee, the winning party costs and other costs incurred during the proceeding, such as experts fees.

At the start of the proceeding, the plaintiff and the defendant must pay an initial court, which depends on the value the claim. Presently the initial court fees payable by the plaintiff and the defendant would be as follows:

- For a court action worth €50,000: €2,142;
- For a court action worth €100,000: €2,754;
- For a court action worth €250,000: € 4,284;

For claims that exceed €275.000,00 the judge may, at the end of the proceeding, order the losing party to pay an additional court fee of approximately 1.2% of the claim amount. Following a decision of the Constitutional Court, judges generally limit the additional fee for high worth claims, so that the costs are not too cumbersome on the losing party.

The losing party will pay the initial court fee paid by the successful party, the costs incurred by successful party with the claim, including expenses incurred with the enforcement, and the additional court fee.

The estimated party costs for the losing party would be:

- In a court action worth €50,000: €1,428;
- In a court action worth €100,000: €1,836;
- In a court action worth €250,000: € 2,856.

For claims that exceed €275.000,00 the winning party costs that may be recovered from the losing party are approximately 0.6% of the claim value, bringing the overall cost to 1.8% of the claim value. As with the court fees, judges will limit the amount of the winning party costs if unreasonable.

Typically, the cost of appeals are about 50% of the cost of a first instance claim. In total the cost of an action plus appeals up to the Supreme Court would cost approximately 3.6% of the claim value for claims worth above €250,000. If the decision is overturned the appealed decision costs revert to the losing party.

The World Bank's «Doing Business 2018» Report estimates that Portuguese court costs correspond to 17.2% of the claim worth of approximately €40,000, including court fees, winning party costs and own costs. For higher value claims, the total cost should be much lower than this estimate.



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ABOUT US

who we are  
and what we do

# About us

Macedo Vitorino & Associados was established in 1996, focusing its activity on advising domestic and foreign clients in specific activity sectors, including banking, telecommunications, energy and infrastructures.

Since the incorporation of the firm we have been involved in several high profile transactions in all of the firm's fields of practice, including banking and finance, capital markets, corporate and M&A, etc. We have also acted on many complex disputes and corporate restructurings.

We are mentioned by The European Legal 500 in twelve of fifteen practice areas, including Banking and Finance, Capital Markets, Project Finance, Corporate and M&A, Tax, Telecoms and Litigation.

Our firm is also mentioned by IFLR 1000 in Project Finance, Corporate Finance and Mergers and Acquisitions and by Chambers and Partners in Banking and Finance, Corporate and M&A, TMT, Dispute Resolution and Restructuring and Insolvency.

Macedo Vitorino & Associados has strong relationships with many of the leading international firms in Europe, in the United States and in Brazil, which enable us to handle cross-border transactions effectively.

Macedo Vitorino & Associados has a truly international practice. We act in several domestic and cross-border transactions, including mergers and acquisitions, financings and foreign investments.

The multidisciplinary and integrated character of our corporate and commercial group allows us to efficiently solve the legal issues of our clients, in particular:

- Commercial contracts, distribution agreements and franchising
- Commercial litigation
- Competition and European law
- Copyright, intellectual property, IT, patents and trade marks
- Corporate and acquisition finance
- Employment
- Foreign investment
- Mergers, acquisitions and privatisations
- Tax

If you want to find out more about Macedo Vitorino & Associados please visit our website at [www.macedovitorino.com](http://www.macedovitorino.com)



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